

ADAM WANG, Bar No. 201233
LAW OFFICES OF ADAM WANG
12 South First Street, Suite 613
San Jose, CA 95113
Tel: (408) 292-1040
Fax: (408) 416-0248
waqw@sbcglobal.net

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

BAO YI YANG, WEI WANG, AND LIANG
XIAN FU

Plaintiffs,

vs.

SHANGHAI GOURMET, LLC, dba
SHANGHAI GOURMET, XU LIANG SHEN,
BO JUAN LIU, and DOES 1-10

Defendants

Case No.: C07-04482 JL

**FIRST AMENDED COMPLAINT FOR
DAMAGE**

1). Violation of California Labor Code §1194;
2). Violations of The Fair Labor Standards Act
(Non-payment of overtime); 3) Failure to
Provide Meal Period in Violation of Labor Code
§226.7; 4) "Waiting Time" Penalties under
California Labor Code §203; 5) For Restitution
of Unpaid Wages in Violation of California
Unfair Trade Practices Act under Business and
Professions Code § 17203; and 6) Fraudulent
Conveyance under Civil Code § 3439.04 and
3439.05.

Plaintiffs, BAO YI YANG ("YI"), WEI WANG ("WANG"), AND LIANG XIAN FU
("FU"), for their complaint, allege as follows:

NATURE OF CLAIM

1. This is a complaint by former employees against their ex-employer, Defendants
SHANGHAI GOURMET, LLC dba SHANGHAI GOURMET ("SHANGHAI GOURMET") for
damages arising out of their employer's failure to pay overtime as required by the Fair Labor
Standards Act and the California Wage Orders and statutes. The Plaintiffs seek compensatory
damages for unpaid wages in addition to liquidated damages under Title 29 U.S.C. § 216(b),
damages under California Labor Code §226.7 for failure to provide meal and rest periods,
waiting time penalties under California Labor Code §§ 203, and attorney's fees, costs, and pre

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

1 judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b).

2 Plaintiffs also seek restitution under California Unfair Trade Practices Act under California
3 Business and Professions Code § 17203.

4 **PARTIES**

5 2. At all times relevant herein, Plaintiffs BAO YI YANG, WEI WANG, AND
6 LIANG-XIAN FU were individuals resident of Alameda and Contra Costa Counties, California,
7 and were employees of Defendants SHANGHAI GOURMET

8 3. At all times relevant herein, Plaintiff FU was an employees of defendant
9 SHANGHAI GOURMET.

10 4. Defendant SHANGHAI GOURMET, LLC is a California corporation doing
11 business under a fictitious name SHANGHAI GOURMET in Walnut Creek, California.
12 According to information and belief, individual defendants XU LIANG SHEN and BO JUAN
13 LIU, are officers, owners or employees of SHANGHAI GOURMET having control over the
14 Plaintiffs' work conditions and work situations, and some are sued fictitiously because their
15 identities are not yet known to the Plaintiffs.

16 **GENERAL ALLEGATIONS**

17 5. At all times relevant herein, Plaintiffs were employees of Defendant SHANGHAI
18 GOURMET, a restaurant doing business in Contra Costa County, California.

19 6. During the course of Plaintiffs' employment with SHANGHAI GOURMET,
20 Plaintiffs regularly worked in excess of 8 hours per day and more than 40 hours per week.

21 7. Plaintiffs were paid on a salary basis.

22 8. Plaintiffs did not perform "exempt" duties in their positions as cooks with
23 SHANGHAI GOURMET and thus were not subject to any exemption under the Fair Labor
24 Standards Act and California Labor Code.

25 9. Individual Defendants XU LIANG SHEN and BO JUAN LIU are liable for the
acts of SHANGHAI GOURMET as the alter egos of SHANGHAI GOURME. Recognition of
the privilege of separate existence would promote injustice because these individual defendants

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

1 have in bad faith dominated and controlled SHANGHAI GOURMET. Plaintiffs are informed
2 and believe, and thereon allege, that Defendants XU LIANG SHEN and BO JUAN LIU, have:

- 3 a. Commingled funds and other assets of SHANGHAI GOURMET and their funds
4 and other assets for their own convenience and to assist in evading the payment of
5 obligations;
- 6 b. Diverted funds and other assets of SHANGHAI GOURMET to other than
7 corporate uses;
- 8 c. Treated the assets of the SHANGHAI GOURMET as their own;
- 9 d. Failed to obtain authority to issue shares or to subscribe to issue shares of
10 SHANGHAI GOURMET;
- 11 e. Failed to maintain minutes or adequate corporate records of SHANGHAI
12 GOURMET;
- 13 f. Failed to adequately capitalize or provide any assets to SHANGHAI GOURMET,
14 LLC; and
- 15 g. Diverted assets from SHANGHAI GOURMET to themselves to the detriment of
16 creditors, including Plaintiffs and other employees.

17 **COUNT ONE**

18 *Violation of California Labor Code, Non Payment Of Overtime*

19 *Labor Code §510*

20 10. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-9 as if fully
21 stated herein.

22 11. At all relevant times herein, Plaintiffs' employment was subject to California
23 Labor Code §§ 1194 and 510, and the applicable Wage Orders promulgated by the California
24 Industrial Welfare Commission pursuant to Labor Code § 1173, which required all employees to
25 be paid overtime for work performed in excess of forty hours per week or eight hours per day,
unless specifically exempted by the law.

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

1 12. During their employment with the Defendants, although Plaintiffs regularly
2 worked in excess of forty hours per week and in excess of eight hours per day, Plaintiffs received
3 only straight time from Defendants for these overtime hours.

4 13. During the period that Plaintiffs were employed with Defendants, Defendants
5 knowingly caused, suffered and permitted Plaintiffs to regularly work in excess of forty hours
6 per week and eight hours per day without paying Plaintiffs one and one half, or double of
7 Plaintiffs' regular rate of pay.

8 14. By not paying overtime wages in compliance with the state law, Defendants
9 violated Plaintiffs' rights under the law, specifically California Labor Code § 1194.

10 15. As a direct and proximate result of Defendants' failure to pay proper wages under
11 the California Wage Orders, Plaintiffs incurred general damages in the form of lost overtime
12 wages in the amount to be proved at trial.

13 16. Defendants had been aware of the existence and requirements of the California
14 Labor Code §§ 510 and 1194 and the Wage Orders, and willfully, knowingly and intentionally
15 failed to pay Plaintiffs the overtime compensation due to them at the time their employment
16 ended.

17 17. Plaintiffs were required to retain attorneys for the purpose of bringing this action
18 and are entitled to an award of attorney's fees and pre-judgment interest pursuant to California
19 Labor Code § 1194(a).

20 WHEREFORE, Plaintiffs pray for judgment as set forth below.

21 **COUNT TWO**

22 *Violation of the Fair Labor Standards Act,*

23 *29 U.S. C. §201, et seq.*

24 18. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-17 as if fully
25 stated herein.

 19. At all relevant times herein, Plaintiffs' employment was subject to the provisions
of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and the

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

1 Plaintiffs were individual employees covered by virtue of their direct engagement in interstate
2 commerce or in production of goods for commerce or by their employment with Defendants,
3 who were, at all times relevant, an enterprise engaged in commerce or in the production of goods
4 for commerce as defined by 29 U.S.C. § 203(s).

5 20. FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work
6 performed in excess of forty hours per week, unless specifically exempted by the law.

7 21. Although Plaintiffs were not so exempt during their employment with
8 Defendants, Defendants knowingly caused, suffered, and permitted Plaintiffs to regularly work
9 in excess of forty hours per week without paying Plaintiffs one and one half of Plaintiffs' regular
10 rates of pay.

11 22. By not paying overtime wages in compliance with FLSA, Defendants violated
12 Plaintiffs' rights under FLSA.

13 23. As a direct and proximate result of Defendants' failure to pay proper wages under
14 the FLSA, Plaintiffs incurred general damages in the form of lost overtime wages in an amount
15 to be proved at trial.

16 24. Defendants intentionally, with reckless disregard for their responsibilities under
17 the FLSA, and without good cause, failed to pay Plaintiffs their proper pay, and thus defendants
18 are liable to Plaintiffs for liquidated damages in an amount equal to their lost overtime wages
19 pursuant to 29 U.S.C. § 216(b) of the FLSA.

20 25. Plaintiffs were required to retain attorneys for bringing this action and are entitled
21 to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the FLSA equal to
22 their respective lost overtime wages.

23 WHEREFORE, Plaintiffs pray for judgment as set forth below.
24
25

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

COUNT THREE

Failure to Provide Meal/Rest Periods
California Labor Code § 226.7

26. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1-25 as if fully restated hereinafter.

27. At all relevant times herein, Plaintiffs' employment with Defendants was subject to the provisions of California Labor Code § 226.7, which requires employers to provide employees a ten minute rest period for every four hours worked and a thirty-minute meal break for every five hours worked, unless expressly exempted.

28. During their employment with Defendants Plaintiffs worked at least 10 hours a day, and were not provided any rest/meal periods as required by law.

29. For each time that Plaintiffs were not provided the required rest or meal period, they are entitled to recover one additional hour of pay at each employee's regular rate of compensation pursuant to California Labor Code section 226.7.

30. Plaintiffs are therefore entitled to payment, in an amount to be proved at trial, with Defendants liable for an extra hour of pay for each meal and/or rest period missed by Plaintiffs.

31. Plaintiffs are also entitled to payment of their reasonable attorney's fees and costs of suit incurred in recovering the additional pay pursuant to California Labor Code section 218.5, and interest pursuant to California Labor Code section 218.6.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

COUNT FOUR

Penalty for Failure to Pay Wages at Termination
California Labor Code § 203

32. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-31 as if fully stated herein.

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

40. By doing so, Defendants violated California Unfair Trade Practices Act, Business and Professions Code §17200, *et seq.* by committing acts prohibited by applicable California Wage Orders as well as FLSA, and thus giving them a competitive advantage over other employers and businesses with whom defendants were in competition and who were in compliance with the law.

41. As a direct and proximate result of Defendants' failure to pay the required overtime pay, the Plaintiffs' rights under the law were violated and the Plaintiffs incurred general damages in the form of unpaid wages to which they were legally entitled.

42. Defendants had been aware of the existence and requirements of the Unfair Trade Practices Act and the requirements of state and federal wage and hours laws, but willfully, knowingly, and intentionally failed to pay Plaintiffs overtime pay due.

43. Plaintiffs, having been illegally deprived of the overtime pay to which they were legally entitled, herein seek restitution of such wages pursuant to the Business and Professions Code §17203.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

COUNT SIX

Fraudulent Conveyance

Civil Code § 3439.04 & § 3439.05

44. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-48 as if fully stated herein.

45. According to information and belief, Defendant SHANGHAI GOURMET had received substantial amount of cash proceeds in the course of restaurant business over years since the inception of Defendant SHANGHAI GOURMET. Instead of counting such cash receipts as its corporate assets and entering such cash receipts on its corporate books, Defendant SHANGHAI GOURMET had allowed and permitted and continues to allow and permit

Defendants XU LIANG SHEN and BO JUAN LIU to take such cash proceeds directly from cash register, and diverted such corporate assets to their personal use without requiring them to pay adequate consideration.

46. Such siphoning of corporate funds had rendered Defendant SHANGHAI GOURMET insolvent in that Defendant Shanghai Gourmet was left without sufficient funds to meet its obligation for wages owed to its employees . As such, the diversion of cash proceeds from Defendant SHANGHAI GOURMET constitutes fraudulent conveyance under California Civil Code § § 3439.04 and 3439.05.

47. Therefore, Plaintiffs are entitled to judgment recovering cash amounts diverted from Defendant SHANGHAI GOURMET to Defendants XU LIANG SHEN and BO JUAN LIU.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray judgment against the defendants and demand as follows:

1. For compensatory damages in unpaid overtime wages;
2. For liquidated damages equal to unpaid overtime wages owed;
3. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid salaries pursuant to California Labor Code §§ 1194(a) & 218.5.
4. For additional wages for failure to provide required meal/rest periods as required by California law together with prejudgment interest of 10% per annum pursuant to California Labor Code § & 218.6;
5. For waiting time penalty damages of thirty days wages pursuant to California Labor Code § 203;
6. For unpaid overtime and unpaid meal and rest period premiums and other civil penalties authorized under Labor Code § 558;
6. For restitution of unpaid overtime pay pursuant to California Business and Professions

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.

1 Code §17203;

2 7. For reasonable attorney's fees pursuant to California Labor Code §1194(a), California
3 Labor Code § 2699(g) and 29 U.S.C. §216(b) of the FLSA.

4 8. For costs of suit herein.

5 9. For such other and further relief as the Court may deem appropriate.

6 Dated: August 1, 2008

7 By: /s/ Adam Wang.
8 Attorney for Plaintiffs
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FIRST AMENDED COMPLAINT

Yang, et al. v. Shanghai Gourmet, LLC., dba Shanghai Gourmet, et al.